
UTAH LABOR COMMISSION

**JOSE LUIS PAYAN and ISABEL VILLA,
parents of CARLOS PAYAN, deceased,**

vs.

**GENWALL RESOURCES, INC.
and ROCKWOOD CASUALTY
INSURANCE COMPANY INC,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

ORDER OF REMAND

Case No. 07-1011

Genwall Resources, Inc. and its insurance carrier, Rockwood Casualty Insurance Company, Inc. (referred to jointly hereafter as “Genwall”), request interlocutory review of Judge Holley’s denial of Genwall’s motion to compel discovery. This matter arises out of the work-related death of Carlos Payan and the claims of Mr. Payan and Ms. Villa for dependents’ benefit under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Carlos Payan was one of six miners who died at Genwall’s Crandall Canyon Mine in August 2007. Carlos Payan’s parents, Jose Payan and Isabel Villa, assert that they relied upon their son for support and, therefore, are now entitled to workers’ compensation dependents’ benefits. Genwall denies these claims on the grounds that Mr. Payan and Ms. Villa were not, in fact, dependent on Carlos Payan at the time of his death.

Mr. Payan and Ms. Villa’s claims are pending hearing and decision by Judge Holley. Genwall has asked Judge Holley to compel Mr. Payan and Ms. Villa to answer questions about “monetary benefits” such as insurance or pension payments they have received or will receive as a result of their son’s death. Judge Holley denied Genwall’s request because the information sought by Genwall was not relevant to Mr. Payan and Ms. Villa’s status as dependents of Carlos Payan.

Genwall asks the Commission to review Judge Holley’s ruling on the foregoing discovery dispute. The Commission notes that Judge Holley has not yet held an evidentiary hearing or issued a final decision on the merits of Mr. Payan and Ms. Villa’s claims.

DISCUSSION AND CONCLUSION OF LAW

The threshold question before the Commission is whether it should engage in interlocutory review of Judge Holley’s preliminary ruling regarding Genwall’s discovery request.

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Interlocutory review of Administrative Law Judges' preliminary rulings can have the effect of disrupting the adjudicatory process, diminishing the ALJs' ability to manage hearings, and delaying the final resolution of claims. Furthermore, the issues raised in interlocutory motions for review may be satisfactorily resolved or rendered moot by subsequent events. In such cases, consideration of an interlocutory motion for review serves no useful purpose, but diverts resources from other cases that are ready for Commission review. In light of these considerations, the Commission will engage in interlocutory review only if the advantages from deciding the issues presented will clearly outweigh "the interruption of the hearing process and the other costs of piecemeal review."¹ As a practical matter, interlocutory review is appropriate only in unusual cases.

In this case, the Commission believes that prompt resolution of the above-described discovery dispute is necessary to the timely adjudication of Mr. Payan and Ms. Villa's claims. Furthermore, and perhaps more importantly, these same discovery disputes may also occur in other dependents' claims that arise out of the Crandall Canyon accident. The Commission will, therefore consider the merits of Genwall's interlocutory motion for review.

As already noted, Genwall requests an order compelling Mr. Payan and Ms. Villa to answer questions regarding various payments they have received or will receive as a result of Carlos Payan's death. Genwall seeks this information for the purpose of demonstrating that Mr. Payan and Ms. Villa are not dependent on Carlos Payan for their support. However, § 34A-2-403(2) of the Utah Workers' Compensation Act—the statute that controls Mr. Payan and Ms. Villa's right to dependent's benefits—provides that "the question of dependency . . . shall be determined in accordance with the facts in each particular case **existing at the time of the injury or death of the employee . . .**" (Emphasis added.) Furthermore, long-standing appellate precedent is in accord with the plain language of § 34A-2-403(2). In *Globe Grain & Milling Co. v. Industrial Commission*, 193 P. 642, 644; *Bradshaw v. Industrial Commission*, 135 P. 2d 530; and *Rigby v. Industrial Commission*, 75 Ut. 454, 459, the Utah Supreme Court has held that a parent's dependency upon a child who has died in a work accident must be determined from the facts as they existed at the time of the injury and death.

In light of the foregoing statutory authority and appellate precedent, the Commission concurs with Judge Holley's conclusion that information regarding payments Mr. Payan and Ms. Villa have received or will receive as a result of their son's death are not relevant to the determination of whether Mr. Payan and Ms. Villa were Carlos Payan's dependents at the time of his death. Consequently, the Commission concludes that Judge Holley correctly declined to order Mr. Payan and Ms. Villa to provide that information to Genwall.

¹ Charles H. Koch, Jr., Administrative Law and Practice (1985), §6.75

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ORDER

The Commission affirms Judge Holley's order. The Commission remands this matter to Judge Holley for adjudication of the merits of Mr. Payan and Ms. Villa's claims to dependent's benefits. It is so ordered.

Dated this 1st day of May, 2008.

Sherrie Hayashi
Utah Labor Commissioner